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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

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Amendment of Sections 74.1231, 74.1232,  
74.1233 and 74.1284 of the Commission's  
)  
Rules to allow AM licensees to become  
)  
licensees of FM translators and to use them  
)  
to retransmit their signals as fill-in service  
)

RM-9419

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF  
CALVARY CHAPEL OF TWIN FALLS, INC.

Calvary Chapel of Twin Falls, Inc. ("Calvary"), by its attorney, hereby submits its  
Comments in the above-referenced rule making proceeding, pursuant to Public Notice, DA 98-  
2527, released December 10, 1998, stating as follows:

This proceeding concerns a proposal submitted by The American Community AM  
Broadcasters Association ("ACAMBA") which would enable the licensees of existing stand  
alone AM stations to operate "fill-in" FM translators which would provide their daytime service  
areas with enhanced nighttime service. ACAMBA also has proposed that such licensees be  
preferred whenever their FM translator applications conflict with those of other applicants and  
that, in any event, noncommercial stations be barred from acquiring translators which would  
operate on the non-reserved, commercial channels. According to ACAMBA, these new rules are  
necessary to enhance the competitive status of these AM stations.

Calvary is the licensee of noncommercial educational FM station KAWZ(FM), Twin  
Falls, Idaho, and of numerous FM translators which make its programming available to other

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communities throughout the United States. The response to the noncommercial programming it has provided has been extraordinarily positive, and Calvary therefore is in the process of expanding its network to other communities which it believes will likewise find its noncommercial programming to be of value and interest. Calvary opposes the ACAMBA proposal for a number of reasons relating to the public interest.

As an initial matter, ACAMBA is not really proposing a “fill-in” service, because such a service provides programming to areas within a station’s computed service contours which cannot receive its signals due to terrain obstruction or some other reason. For this reason, the ability to utilize such translators often is critical to an FM station licensee. This phenomenon, however, is not characteristic of AM stations. Rather, ACAMBA seeks to use these FM translators to serve areas which the AM stations in question already serve, at least during daytime hours. Particularly when one considers the generally low listening levels during the “graveyard” nighttime hours after midnight and before 6:00 a.m., this means that the population which would receive the “new” FM service would already have access to such programming during most of the hours when they might wish to listen to it, even in winter. Such duplication would be even more extensive where the AM stations in question provided adequate signals to substantial portions of the population during nighttime, post-sunset, and pre-sunrise hours as a result of the Commission’s repeated revisions of the AM rules to enhance their ability to serve their populations during those hours. Consequently, the ACAMBA proposal in essence requests that much of the remaining available broadcast spectrum in a community be used, for the most part, simply to duplicate existing commercial programming.

In this regard, it is notable that ACAMBA does not necessarily seek additional broadcast spectrum to serve areas which AM stations cannot not reach despite these new rules; their new FM translators could also be placed in population centers which already have benefitted from the Commission's earlier rule making proceedings. In sum, ACAMBA would devote scarce broadcast spectrum to merely repeating programming which for the most part already is available in the areas to be served by their new facilities.<sup>1</sup>

The issue before the Commission, therefore, is a simple one from a public interest standpoint: Can it be preferable to have a translator provide an entirely new service to the community on a full time basis, or must scarce broadcast spectrum instead always be devoted to the duplication of programming which already is available during most, if not all, of the time that such translator is operating? To state the question is to answer it adversely to ACAMBA.

Moreover, as the Commission is well aware, most communities within the continental United States already are served by a plethora of commercial broadcast services. In this context, the Commission repeatedly has recognized that noncommercial educational radio service provides unique benefits to the listening public. Given the scarcity of available spectrum for new full time stations of any sort, however, FM translators often are the only means of bringing a new noncommercial service to communities which need such service. Yet the number of available FM channels is limited, and technical limitations which exist in the vicinity of Channel 6 TV facilities narrow the available spectrum even further. The Commission, therefore, should

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<sup>1</sup> In other instances, AM stations located in more rural areas would be able to place new FM translators near major population centers where they, at best, provide only fringe service even during daytime hours.

certainly refuse to adopt ACAMBA's proposal to the extent that it would make certain portions of the FM spectrum off-limits to noncommercial operators.<sup>2</sup> Stated otherwise, another issue before the Commission is whether the public interest would best be served by always using limited spectrum to add to the wealth of commercial services available, or to instead devote that spectrum to bringing in a new noncommercial service which the community may lack. Once again, the answer is clear: A new type of service generally would better serve the public interest.

Calvary does not mean to say that AM stations necessarily should be precluded from serving their authorized service areas with FM translators in appropriate circumstances, such as where the station can show that a significant population which does not already receive service from the station -- and under the Commission's rules cannot receive such service -- would benefit from the reception in question. Under no circumstances, however, should AM stations automatically be entitled to receive such authorizations, to the detriment of other services and to the detriment of the general public. If it can be shown that commercial use of a given frequency would indeed serve the public interest, such use may be approved. It should not be pre-determined at the outset, however, that the commercial interests of existing AM licensees must always take precedence.

In sum, the Commission has in the past recognized that commercial AM licensees may require some relief, and has appropriately allowed more AM stations to operate during hours when they previously could not operate. The Commission has also devoted significant new

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<sup>2</sup> It should also be noted that the Commission already has stringent requirements which must be satisfied before a noncommercial licensee may operate a translator on a non-reserved FM channel.

spectrum to the expanded AM band, thereby reducing congestion on the existing band, as well. New technologies, such as digital broadcasting, will further enhance the ability of AM stations to serve their communities more effectively and more competitively than they may do at present. There is no reason, therefore, why such stations should receive yet an additional, automatic benefit when the result of such benefit could well serve to deprive the public of entirely new, unduplicated noncommercial services. In the event that a commercial AM licensee and an FM licensee (noncommercial or otherwise) file mutually exclusive applications to operate an FM translator, both applicants will offer the public certain benefits, and the Commission should recognize and balance those benefits as it does (or will do) when both commercial and noncommercial applicants have applied to construct full service stations in the non-reserved FM band.

It should also be recognized that the Commission has pending another rule making proceeding, to consider whether FM translators should be authorized to originate programming as "low power FM stations." Giving AM stations priority at this point may significantly limit the availability of spectrum which might be used for such a service, and thus effectively pre-determine the outcome of that proceeding as a practical matter, regardless of the Commission's ultimate resolution of that proceeding. That is, if AM stations are authorized to obtain new FM translators before other entities can apply for the frequencies in question, there may be no spectrum available for what the Commission may decide can be a valuable complement to existing full service radio operations. In any event, should the Commission authorize AM stations to obtain FM translator facilities for "fill-in" purposes (in addition to allowing other entities, including noncommercial FM licensees, to apply for the channel), it should absolutely


prohibit such AM licensees from ever originating any programming on their FM channels.

For all of the above reasons, Calvary does not absolutely oppose an amendment of the Commission's rules to allow stand alone AM stations to improve their service to their communities through the use of FM translator stations.. Such authorization should only be permitted, however, when an AM station can show that its proposed translator will enable it to serve populations which it presently cannot serve, while other applicants -- including licensees of noncommercial FM stations -- should be afforded an opportunity to submit mutually exclusive applications which propose to serve the public interest in other respects. New noncommercial service to a community should not be precluded in advance by the Commission's adopting the extreme proposal submitted by ACAMBA which would automatically favor AM licensees and prevent noncommercial educational licensees from providing their own new services to the public.

Respectfully submitted,

CALVARY CHAPEL OF TWIN FALLS, INC.

By:

  
Eric S. Kravetz

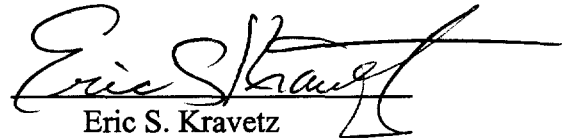
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January 26, 1999

CERTIFICATE OF SERVICE

I, Eric S. Kravetz, hereby certify that on January 25, 1999, the foregoing "Comments of Calvary Chapel of Twin Falls, Inc." have been sent by U.S. mail, first class postage prepaid, to the following:

American Community AM Broadcasters Association  
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Eric S. Kravetz